

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5464 OF 1985

WITH

SPECIAL CIVIL APPLICATION NO.5465 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

M/s.SHIVLAL CHATURBHAI

VERSUS

THE VIRAMGAM MER.CO-OP BANK & ORS.

Appearance:

(In both SCAs:)

MR KV SHELAT for the Petitioner

MR AK CLERK for the Respondent No.1

None present for other Respondents

CORAM: S.K. KESHOTE, J
Date of decision: 13/12/96

C.A.V. JUDGMENT

Heard learned counsel for the parties. As the facts and grounds taken in these Special Civil Applications are somewhat identical, the same are being disposed of by this common order.

2. Re.: Special Civil Application No.5464 of 1985:

For non payment of the loan taken by the petitioner from the respondent No.1, the respondent No.1 has filed Arbitration Case No.870 of 1982 before the Board of Nominees. In the Arbitration Case, right to cross-examine the witness of the respondent No.1 and led evidence by the petitioner has been closed. The petitioner moved an application before the Board of Nominee for giving it an opportunity to cross-examine the witness and to lead oral and documentary evidence. Said application was rejected by the Board of Nominees under its order dated 28th February 1985. The petitioner filed revision application before the Gujarat State Cooperative Tribunal challenging the said order. The revision application was heard and decided by the Tribunal on 12th July 1985. The revision application has been allowed and the petitioner has been given right to lead evidence though on the condition to deposit a sum of Rs.5,000/- in the respondent-Bank. Hence this Special Civil Application before this Court.

3. On 8.10.85, this Court has passed an order which reads as under:

"Rule. returnable on 14.10.85. Direct Service (on resp. No.1 only). In the meantime the applicants shall go ahead with the leading of evidence but the operation of the order of deposit is stayed."

4. Re.: Special Civil Application No.5464 of 1985:

In this case also evidence of the petitioner has been closed by the Board of Nominee and on revision, right has been given to the petitioner by the Tribunal though on the condition of deposit of Rs.7,500/- in the respondent-Bank. Hence this Special Civil Application. The Court has made order in this case on 8.10.85 which reads as under:

"Rule, returnable on 14.10.85. Direct Service
(on resp. No.1 only). In the meantime the
applicants shall go ahead with the leading of
evidence, but the operation of the order of
deposit is stayed."

5. The learned counsel for the respondent submits
that the cases are pending before the Board of Nominees.
This Court has not stayed the proceedings of the
Arbitration cases and in normal course the same would
have been decided by now.

6. I am not concerned in the present case to go on
question why those cases have not been disposed of. The
fact is that those cases have not been disposed of so far
as the order passed by the Tribunal has been stayed by
this Court to the extent where the condition has been
imposed of depositing some amount in the Bank. Interest
of justice will be met in case these Special Civil
Applications are disposed of with the directions to the
Board of Nominees where the Arbitration cases are pending
to give the the petitioner an opportunity to lead
evidence without insisting for compliance of the order of
the Tribunal to the extent where that right has been
given subject to the deposit of the amount. Rule is made
absolute in aforesaid terms with no order as to costs.

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(sunil)